

ESTTA Tracking number: **ESTTA425582**

Filing date: **08/17/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	eCube Solutions, LLC
Granted to Date of previous extension	08/17/2011
Address	5 Cold Hill Road South Building 20 Mendham, NJ 07945 UNITED STATES
Correspondence information	Tom ONeill eCube Solutions, LLC 5 Cold Hill Road South Building 20 Mendham, NJ 07945 UNITED STATES tom.oneill@getecube.com

Applicant Information

Application No	85030652	Publication date	04/19/2011
Opposition Filing Date	08/17/2011	Opposition Period Ends	08/17/2011
Applicant	Universal Master Products Limited 69 Hayes Lane Beckenham, BR36RE UNITED KINGDOM		

Goods/Services Affected by Opposition


Class 009. All goods and services in the class are opposed, namely: Temperature mimicking sensors for the monitoring and control of refrigeration units
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3805518	Application Date	04/13/2009
Registration Date	06/22/2010	Foreign Priority Date	NONE
Word Mark	ECUBE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2006/01/01 First Use In Commerce: 2006/01/01 Temperature mimicking sensors for use in refrigerating apparatus; energy saving devices for refrigeration apparatus, namely, temperature mimicking devices which mimic the temperature of food in a refrigeration system and reduce the effects of air temperature fluctuations on the refrigerator control thermostat; parts and fittings for the aforesaid goods
Related Proceedings	New Jersey District Court Case: 3:2010cv02316
Attachments	77713002#TMSN.jpeg (1 page)(bytes) Notice of Opposition - 3cube.pdf (4 pages)(49864 bytes)

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Tom ONeill/
Name	Tom ONeill
Date	08/17/2011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of application Serial No. 85030652
For the mark: 3CUBE
Published in the Official Gazette: April 11, 2011

eCube Solutions, LLC)	
)	
Opposer,)	
)	
v.)	Opposition No.
)	
)	
Universal Master Products Limited)	
Applicant,)	
)	

NOTICE OF OPPOSITION

eCube Solutions, LLC (“Opposer”) believes that it will be damaged by registration of the mark “3CUBE” with those services listed in Application Serial No. 85030652 (the “Application”), and hereby opposes the Application. As grounds for its opposition, Opposer alleges as follows:

PARTIES

1. Opposer is a New Jersey Limited Liability Company having its principal place of business at 5 Cold Hill Road South, Building 20, Mendham, NJ 07945.
2. On information and belief, Universal Master Products Limited (“Applicant”) is a Limited company organized under the laws of the United Kingdom, with its principal place of business at 69 Hayes Lane, Beckenham BR36RE, United Kingdom

OPPOSER’S MARK, GOOD AND SERVICES

3. Opposers sells temperature mimicking sensors for use in refrigerating apparatus; energy saving devices for refrigeration apparatus, namely, temperature mimicking devices which mimic the temperature of food in a refrigeration system and reduce the effects of air

temperature fluctuations on the refrigerator control thermostat; parts and fittings for the aforesaid goods (“Opposer’s Goods and Services”) under the trademark “eCube” (“Opposer’s Mark”).

4. Opposer is the owner of trademark registration 3805518 for Opposer’s Mark.

APPLICANT’S MARK, GOODS AND SERVICES

5. The application was filed on May 5, 2010 (“Applicant’s Filing Date”) based on an intent to use the mark in commerce.
6. The Application was published in the Official Gazette on April 19, 2011.
7. The goods and services listed on the Application are: “Temperature mimicking sensors for the monitoring and control of refrigeration units” (“Applicants Goods and Services”).

CLAIMS

A. LIKELIHOOD OF CONFUSION

8. Opposer’s mark is distinctive for Opposer’s Goods and Services.
9. Opposer’s Mark was registered for Opposer’s Goods and Services before the filing date of Applicant’s Application.
10. Opposer has continuously used Opposer’s Mark in commerce since well before Applicant submitted its Application.
11. Opposer has not abandoned Opposer’s Mark in connection with any of Opposer’s Goods and Services.
12. As a result of its extensive use and promotion of Opposer’s Mark, that mark has developed substantial goodwill and is a strong mark.
13. Opposer’s Goods and Services include “Temperature mimicking sensors for the monitoring and control of refrigeration units.”
14. Applicant’s Goods and Services are virtually identical to Opposer’s Goods and Services.

15. Applicant's Mark so resembles Opposer's Mark as to be likely to cause confusion, or to cause mistake, or to deceive as to the origin, sponsorship and approval of Applicant's Goods and Services, and is likely to suggest an affiliation, connection or association of Applicant and Applicant's Services with Opposer and Opposer's Goods and Services, with consequent injury to Opposer, the trade and to the public.
16. The registration of Applicant's Mark would prevent Opposer from exercising exclusive control over the goodwill and reputation associated with Opposer's Mark. Therefore, the registration of Applicant's Mark would damage and injure Opposer.
17. Opposer will also be damaged by the registration of Applicant's Mark because such registration will support statutory rights for Applicant in violation and derogation of Opposer's prior, superior and exclusive rights in Opposer's Mark.
18. Opposer also notified Applicant on February 1, 2010, to CEASE AND DESIST Applicant's use of Opposers Mark, including any confusingly similar marks.

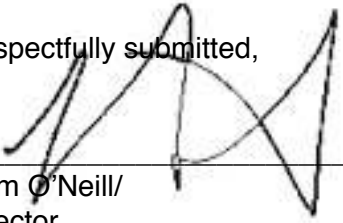
B. DILUTION

19. Opposer's Mark is distinctive and famous.
20. Opposer's Mark became distinctive and famous prior to Applicant's Filing Date.
21. Registration of Applicant's Mark is likely to lessen the capacity of Opposer's Mark to identify and distinguish Opposer's Goods and Services and is likely to dilute the strength of Opposer's Mark.

REQUEST FOR RELIEF

WHEREFORE, Opposer requests that the mark in Application Serial No. 85030652 be denied registration in Class 009.

Respectfully submitted,



/Tom O'Neill/
Director
eCube Solutions, LLC
Phone: 862-812-5855
Email: tom@getecube.com

Date: 8/17/2011

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing document is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to Jeffrey H. Greger, Lowe Hauptman Ham & Berner, LLP, Suite 300, 1700 Diagonal Road, Alexandria, VA 223143 on this 17th day of August, 2011.



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